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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/960,114	09/21/2001	Kenneth B. Higgins	5113B	5752
7590	01/27/2004		EXAMINER	
Milliken & Company P.O. Box 1927 Spartanburg, SC 29304			JUSKA, CHERYL ANN	
			ART UNIT	PAPER NUMBER
			1771	

DATE MAILED: 01/27/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/960,114

Applicant(s)

HIGGINS ET AL.

Examiner

Cheryl Juska

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 14 October 2003.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 88,90-128,130-139 and 144-148 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) \_\_\_\_\_ is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☒ Claim(s) 88,90-128,130-139 and 144-148 are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. §§ 119 and 120**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All   b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.  
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)                      4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)                      5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_                      6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Response to Amendment***

1. Applicant's amendment filed October 14, 2003, has been entered. Claims 1-87, 89, 129, and 140-143 have been cancelled, while claims 88, 91, and 120-122 have been amended as requested. Additionally, it is noted that the first occurrence of claim 144 is renumbered as claim 143 according to Rule 1.126, which was originally omitted from the claims as filed, while the second occurrence of claim 144 remains numbered 144. Thus, the pending claims are 88, 90-128, 130-139, and 144-148.
2. Said amendment is sufficient to withdraw the provisional double patenting rejections set forth in section 1-4 of the last Office Action.

### ***Election/Restrictions***

3. Restriction to one of the following inventions is required under 35 U.S.C. 121:
  - I. Claims 88, 90-128, 130-132, 134-136, 138, drawn to a carpet article with a rebond foam backing, classified in class 428, subclass 95.
  - II. Claim 145, drawn to a method of making said carpet article, classified in class 156, subclass 60+.
  - III. Claim 133, drawn to a carpet article with a flame laminated foam backing, classified in class 428, subclass 95.
  - IV. Claims 137 and 139, drawn to a carpet article with a specified backing weight classified in class 428, subclass 95.

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V. Claim 144, drawn to a method of recycling waste foam, classified in class 264, subclass 37.1+.

VI. Claims 146-148, drawn to a carpet tile having magnetic material therein, classified in class 428, subclass 95.

The inventions are distinct, each from the other because of the following reasons:

4. Inventions of Group II and Group I are related as process of making and product made.

The inventions are distinct if either or both of the following can be shown: (1) that the process as claimed can be used to make other and materially different product or (2) that the product as claimed can be made by another and materially different process (MPEP § 806.05(f)). In the instant case, the product can be made by forming the rebond layer as a single layer which is bonded to the primary carpet backing and then adhering a nonwoven layer to the opposite side of said rebond layer, rather than forming a nonwoven sandwich of the rebond foam of double thickness, slitting said sandwich laterally, and bonding one half of said sandwich to a primary carpet backing.

5. Inventions of Group I, Group III, Group IV, and Group VI are unrelated. Inventions are unrelated if it can be shown that they are not disclosed as capable of use together and they have different modes of operation, different functions, or different effects (MPEP § 806.04, MPEP § 808.01). In the instant case the different inventions the carpets of said groups all have different backing materials and/or features.

6. Inventions of Group V and Group I are related as process of making and product made.

The inventions are distinct if either or both of the following can be shown: (1) that the process as claimed can be used to make other and materially different product or (2) that the product as

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claimed can be made by another and materially different process (MPEP § 806.05(f)). In the instant case, the process can be employed to make a carpet underlay rather than the product of Group I. Alternatively, the product of Group I can be made by a process wherein the rebond foam particles are not compressed.

7. Inventions of Group II and Groups III, IV, and VI are unrelated. Inventions are unrelated if it can be shown that they are not disclosed as capable of use together and they have different modes of operation, different functions, or different effects (MPEP § 806.04, MPEP § 808.01). In the instant case, the method of Group II does not produce the products of Groups III, IV, and VI.

8. Inventions of Group II and Group V are unrelated. Inventions are unrelated if it can be shown that they are not disclosed as capable of use together and they have different modes of operation, different functions, or different effects (MPEP § 806.04, MPEP § 808.01). In the instant case, the method of Group II and the method of Group V have different functions (i.e., method of making a carpet and a method of recycling foam).

9. Inventions of Group V and Groups III, IV, and VI are unrelated. Inventions are unrelated if it can be shown that they are not disclosed as capable of use together and they have different modes of operation, different functions, or different effects (MPEP § 806.04, MPEP § 808.01). In the instant case, the method of Group V does not produce the products of Groups III, IV, and VI.

10. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

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11. Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).
12. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

#### ***Conclusion***

13. Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Cheryl Juska whose telephone number is 571-272-1477. The Examiner can normally be reached on Monday-Friday 10am-6pm.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Terrel Morris can be reached on 571-272-1478. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 571-272-0994.

  
CHERYL A. JUSKA  
PRIMARY EXAMINER

cj  
January 17, 2004